

RICHARD M. CAMPANELLI  
STEPHEN M. CLARKE  
A. WRAY FITCH III  
JAMES A. GAMMON\*†  
GEORGE R. GRANGE II  
STEPHEN H. KING\*  
NANCY OLIVER LESOURD  
LITA L. OBERHOLSER\*  
TIMOTHY R. OBITTS  
H. ROBERT SHOWERS  
J. MATTHEW SZYMANSKI  
SCOTT J. WARD  
MICHAEL J. WOODRUFF  
REBECCA D. ZACHRITZ

GAMMON & GRANGE, P.C.

ATTORNEYS AND COUNSELLORS AT LAW

SEVENTH FLOOR  
8280 GREENSBORO DRIVE  
MCLEAN, VA 22102-3807

TELEPHONE  
(703) 761-5000  
FACSIMILE  
(703) 761-5023

WEB SITE  
WWW.GANDGLAW.COM  
E-MAIL  
GG@GANDGLAW.COM

RECEIVED

JAN 17 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

\*NOT ADMITTED IN VIRGINIA  
† OF COUNSEL

January 17, 2001

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW-A325  
Washington, D.C. 20554

-- BY HAND --

Re: Reply to Opposition to Application for Review  
Littlefield, Arizona et. al  
Docket No. 99-282; RM-9710

Dear Ms. Salas:

Please find attached the Reply to Opposition to Application for Review filed by Mountain West Broadcasting in the above-referenced pending rulemaking.

Please direct any questions to the undersigned.

Respectfully submitted,

**MOUNTAIN WEST BROADCASTING**

By A. Wray Fitch III  
A. Wray Fitch III  
Its Counsel

cc: Victor A. Michael, Jr.

[K:\0524\Littlefield\salas.awf]

File of Copies rec'd C+4  
L11A B C D E

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

**RECEIVED**

**JAN 17 2001**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations  
Littlefield, Arizona

)  
)  
)  
)  
)

MM Docket No. 99-282  
RM-9710

To: Chief Allocations Branch

**REPLY TO OPPOSITION TO APPLICATION FOR REVIEW**

Mountain West Broadcasting ("Mountain West"), files this Reply to the Opposition to Application for Review filed by Death Valley Broadcasters ("Death Valley") on January 4, 2001. Death Valley ignores Mountain West's primary argument, does not dispute the accuracy of the data submitted by Mountain West, and seems to exalt form over substance.

Death Valley fails to address Mountain West's primary argument in its Application for Review -- that the Commission, in denying the Mountain West Petition for Reconsideration, failed to properly consider the evidence presented (even absent any supplemental data) that Littlefield, Arizona is a community for allocation purposes. As noted in Mountain West's Application for Review, the Commission misconstrued and refused to consider on reconsideration even the data submitted by Mountain West in its Comments on Proposed Rulemaking demonstrating that Littlefield is a community. *See, Application for Review*, pp 2-4.

Death Valley accuses Mountain West of "spin tactics and gamesmanship" *Opposition* at 6, but does not claim that any of the information provided by Mountain West about Littlefield is erroneous. Death Valley's arguments amount to form over substance. It does not like the type of information submitted ("a bunch of web pages, without more, cannot constitute an entire community

showing..." *Opposition* at 5). It misconstrues the data ("Those web pages essentially refer to entities with Beaver Dam in their name and not Littlefield" *Opposition* at 5.) A review of the data shows that is not true – the businesses are nearly all identified specifically with Littlefield.

Death Valley also faults Mountain West for the timing of the information it provides. It starts off by claiming, "Even now in its application Mountain West has attached new supplemental material." *Opposition* at 1. Exhibit 2 attached to the Application for Review is material submitted earlier in Mountain West's Comments on Proposed Rulemaking filed November 1, 1999 and attached again for convenience. Exhibit 1 was submitted to show the information available to the Commission on Yahoo Yellow Pages about the community of Littlefield. These businesses had already been identified by Mountain West in earlier pleadings.

Death Valley faults Mountain West for providing additional information on Littlefield in its Petition for Reconsideration and Reply.<sup>1</sup> As noted, however, in the cases cited by Mountain West in its Application for Review, the Commission routinely considers supplemental information. The public interest also warrants consideration under Rule 1.429(b) since there is a strong public interest in allocation of a first service to a community like Littlefield.

Death Valley appears particularly perturbed about the supplement Mountain West filed to its Reply in the reconsideration proceeding. Death Valley claims that the supplement was filed "at a time when no other party could respond." The supplement was filed before the deadline for filing the Reply and therefore was properly submitted. Furthermore, Commission rules do not contemplate a response to a Reply. In any event, Death Valley has had more than sufficient opportunity to challenge the community status of Littlefield.

---

<sup>1</sup> Death Valley sites *Galesburg, Illinois and Ottumwa, Iowa*, 200 FCC Lexis 2719 (October 27, 2000) for the proposition that a party should not be allowed to provide supplemental information on reconsideration. The Commission, in fact, did review the supplemental information in considering whether the material that should be considered in the public interest. The Commission specifically considered the arguments raised and rejected them before deciding the new material was not in the public interest.

Most tellingly, however, is that Death Valley cannot claim that any of the information provided by Mountain West is erroneous, and it provides no case authority to support its claim that a community with attributes like Littlefield should not be considered a community. Littlefield has over 27 businesses, 2 schools, 1 community college, its own fire department, its own post office, its own zip code, governmental services, its own telephone exchange, 1 church, and residents who clearly identify themselves with Littlefield. Mountain West also provided statements from individuals who reside in Littlefield, who consider Littlefield a community, and who have a sense of unity and involvement in the community, including its educational, recreational, religious, business, and residential facilities and services. Also provided was a declaration of a research paralegal who, after speaking with numerous identified individuals, reported that those individuals considered Littlefield, Arizona to be a community, a distinct population grouping, with its own interests, businesses and services.

Lastly, Death Valley claims that no explanation is given by Mountain West for its failure to seek reconsideration of the KONY-FM one step upgrade and that Mountain West "had a firm obligation to file a timely Petition for Reconsideration of the grant with the FM Branch." *Opposition* at 5. Mountain West, in fact, provided a page and a half of explanation, which it will not again repeat. *See, Application for Review* at pages 6 and 7. It, furthermore, had no obligation or standing to file a Petition for Reconsideration since the KONY-FM one step upgrade became final long before the Littlefield, Arizona rulemaking was decided, at a time when Mountain West was not an aggrieved party and had no basis to appeal.

In sum, Death Valley can point to no error in the information provided on the community status of Littlefield. It can only argue about the timing of some of the information provided and make general allegations, without case support, that the information provided is insufficient to demonstrate Littlefield is a community. Mountain West has cited case authority demonstrating that

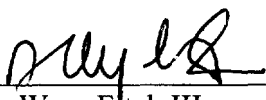
even based solely on information provided in its Comments on Proposed Rulemaking, Littlefield is a community. Mountain West has also demonstrated that the Commission has fully considered supplemental information in the past and should do so now. The supplemental information further demonstrates Littlefield is a community for allocation purposes.

WHEREFORE, it is respectfully requested that Mountain West's Application for Review be granted.

Respectfully submitted,

**MOUNTAIN WEST BROADCASTING**

**GAMMON & GRANGE, P.C.**  
8280 Greensboro Drive, 7th Floor  
McLean, VA 22102-3807  
(703) 761-5000

By   
A. Wray Fitch III  
Its Attorney

January 17, 2001

[K:\0524\Littlefield\reply2.awf]

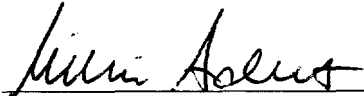
**CERTIFICATE OF SERVICE**

I, Millie Adams, in the law offices of Gammon & Grange, P.C., hereby certify that I have sent this 17th day of January, 2001, by first-class, postage prepaid, U.S. Mail, copies of the foregoing  
REPLY TO OPPOSITION TO APPLICATION FOR REVIEW to the following:

Richard-Michelle Eyre  
REC Networks  
P.O. Box 2408  
Tempe, AZ 82580-2408

Henry E. Crawford, Esq.  
Smithwick & Belendiuk, P.C.  
1990 M Street, N.W., Suite 510  
Washington, D.C. 20036

John A. Karousos  
Chief Allocations Branch  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 2C-207  
Washington, D.C. 20554

  
\_\_\_\_\_  
Millie Adams